



faegredrinker.com

Susan M. Sharko  
Partner  
susan.sharko@faegredrinker.com  
973-549-7350 direct

Faegre Drinker Biddle & Reath LLP  
600 Campus Drive  
Florham Park, New Jersey 07932  
+1 973 549 7000 main  
+1 973 360 9831 fax

***Via ECF***

July 18, 2024

Honorable Rukhsanah L. Singh, U.S. Magistrate Judge  
United States District Court- District of NJ  
Clarkson S. Fisher Building & U.S. Courthouse  
402 East State Street, Court Room 7W  
Trenton, NJ 08608

***Re: In re: Johnson & Johnson Talcum Powder Products Marketing,  
Sales Practices and Products Liability Litigation - MDL 2738***

Dear Magistrate Judge Singh:

Pursuant to the Court's request for bi-monthly reports, the parties jointly offer the following update on recent activities in the MDL.

**Expert Disclosures and Discovery:**

- Depositions of the Plaintiffs' experts have been completed.
- In accordance with the Court's order, Defendants served expert reports on May 28, 2024. The depositions of Drs. Sutcliffe, Holcomb, Nony, Longacre, Permuth, Merlo Diette, Osann, Sanchez, Saenz, Finan, Wiley, and DiFeo have been completed. The deposition of Dr. Su commenced on July 11 but could not be completed in a single day and was completed on July 18. The depositions of Drs. Boyd and Punjabi are scheduled to be completed on July 18 and 19 respectively.
- On April 18, 2024, Defendants requested another deposition of Plaintiffs' expert Dr. Saed on the basis that Plaintiffs' other experts rely on multiple publications by Dr. Saed since his last deposition. Plaintiffs have withdrawn Dr. Saed as a Plaintiffs' expert and object to an additional deposition. Defendants will seek leave from the Court to file a Motion to Compel Dr. Saed's deposition.
- On May 10, 2024, Defendants served a new set of requests for production concerning a new publication by Dr. Saed regarding talcum powder and ovarian cancer. Plaintiffs have advised Defendants that the withdrawal of Dr. Saed as an expert makes further requests and productions moot. Defendants object to Plaintiffs'

refusal to respond to the discovery request and will seek leave from the Court to file a Motion to Compel production.

### **Plaintiffs' Steering Committee's Motion to Establish a Census**

- On July 10, 2024, the PSC filed a Motion for the Entry of an Order to Establish a Census and Require the Provision of Data by Persons with Unfiled Claims/Cases to Confirm the Plaintiff Suffers from Epithelial Ovarian Cancer, Fallopian Tube Cancer, or Primary Peritoneal Cancer (ECF 32931). The motion is set for August 5, 2024, with Opposition due by July 22, 2024, and Replies due on July 29, 2024. Defendants will file their Opposition by the noted deadline.

### **Dispositive Motions & *Daubert* Motions:**

- For the upcoming R. 702 motions, Your Honor granted Defendants' request to file briefs, not to exceed a combined 450 pages, to address the experts by group and topic (ECF 32966). Oppositions are due on August 22, 2024, with Replies due on September 12, 2024.
- On July 16, 2024, Defendants requested that the deadline of July 23, 2024, for dispositive motions be moved to thirty (30) days after the Court rules on *Daubert* motions and the appeal of the Special Master's ruling on the proposed Second Amended Master Long Form Complaint, whichever ruling comes later, for the reasons expressed in Defendants' letter (ECF 32974). The PSC objects to the extension of time. A deadline of thirty (30) days after the Court rules upon the appeal of the Special Master's ruling will result in the PSC being forced to identify the case or cases to be consolidated for trial prior to having any information about legal challenges that will be made by Defendants. The PSC states that such a delay is prejudicial to the PSC's ability to evaluate the strengths and weaknesses of the bellwether cases, and therefore, the PSC objects.

### **Plaintiffs' Subpoena to Public Library of Science (PLOS):**

- On March 20, 2024, the PSC served the Public Library of Science (PLOS) with a subpoena for information related to a manuscript submitted by Plaintiffs' expert Dr. Saed to PLOS in 2020.
- On April 12, 2024, Counsel for PLOS served an objection to the subpoena claiming privilege and confidentiality and attaching to the objection a Privilege Log on counsel for the Plaintiffs.

### **Defendants' Motion to Compel Inspection of Dr. William Longo's Laboratory (Dkt. 3227)**

- On June 17, 2024, Special Master Schneider denied Defendants' Motion to Compel the Inspection of Dr. William Longo's Laboratory (ECF 32826). Defendants filed an objection to the Special Master's Order on July 1, 2024 (ECF 32872). The motion is set for August 5, 2024, with Plaintiffs' Opposition due on July 22, 2024, and Defendants' Reply due on July 29, 2024.

#### **Notice of Subpoena to Paul Hess:**

- Defendants filed an Amended Notice of Intent to Serve Subpoena on Paul Hess on April 23, 2024 (ECF 32037). The subpoena is for a videotaped deposition of Mr. Hess, a non-party and employee of Plaintiffs' expert, Dr. William Longo.
- The deposition of Mr. Hess occurred on July 10, 2024. In light of the multiple directions not to answer questions, further relief shall be sought by the Defendants. It is the position of the PSC that the Defendants' objections were heard by Special Master Schneider at the beginning of Mr. Hess's deposition and that the deposition proceeded in keeping with Special Master Schneider's orders. Plaintiffs will object to any continuation of Mr. Hess's deposition. It is the Defendants' position that the PSC did not abide by the law or the ruling of Special Master Schneider and note that Special Master Schneider invited any disputes to be brought to him after the conclusion of the deposition.

#### **Subpoenas to Beasley Allen Law Firm, Smith Law Firm, and Ellington Management Group:**

- On May 20 and 21, 2024, Defendants filed Notices of Intent to Serve Subpoena on the Beasley Allen Law Firm (ECF 32201), Ellington Management Group (ECF 32215), and the Smith Law Firm (ECF 32226). On May 30, 2024, the Plaintiffs' Steering Committee filed a Motion to Quash or for Protective Order regarding these subpoenas (ECF 32483). Also on May 30, 2024, the Beasley Allen Law Firm separately filed a Motion to Quash and/or for Protective Order concerning the subpoena directed to the Beasley Allen Law Firm (ECF 32445). On June 3, 2024, Allen Smith and the Smith Law Firm filed a Motion to Quash the Subpoena directed to them (ECF 32603). Defendants filed one opposition to all three motions on June 17, 2024 (ECF 32827). Non-Party Beasley Allen served their reply brief on June 24, 2024 (ECF 32858). All three motions were heard on July 1, 2024 in a hearing conducted by Special Master Schneider. On July 9, 2024, Special Master Schneider granted all three Motions to Quash (ECF 32926). Defendants plan to appeal that ruling.

#### **Plaintiffs' Subpoena to Analysis Group LLC:**

- On June 11, 2024, the PSC served Analysis Group LLC with a subpoena for information related to Defendants' expert Dr. Kathleen Sutcliffe and her work on this

litigation. The Defendants view the subpoena as overbroad, raising issues of financial disclosures for all experts in the MDL. The parties will meet and confer on the issues.

### **Plaintiff Profile Forms:**

- On June 11, 2024, Your Honor entered Defendants' Order to Show Cause why the cases listed in Exhibit A attached to the Order should not be dismissed with prejudice for their failure to provide Defendants with Plaintiff Profile Forms (ECF 32811). The Plaintiffs subject to the Order had until July 2, 2024, to show cause why their case should not be dismissed with prejudice. On July 17, 2024, Defendants filed a final dismissal order listing 2016-2017 cases subject to the June 11<sup>th</sup> OTSC which failed to show good cause to the Court (ECF 32980). The PSC has no objection to the order as submitted by defendants on July 17, 204 ( Doc. 32980 ).
- Defendants respectfully request the June 3<sup>rd</sup> OTSC, submitted with an updated list of deficient cases on June 21<sup>st</sup> (ECF 32850), and the July 1<sup>st</sup> OTSC (ECF 32868) be entered by the Court.
- With regard to PPF Reports, the parties agree that if a Plaintiff contends that Defendants have mistakenly placed a Plaintiff's case on the deficiency list, counsel for the Plaintiff will reach out directly to defense counsel to advise of that error with Defendants to correct the list as needed. The parties agree that Plaintiffs should confirm the accuracy of the MDL Centrality information and close the MDL Centrality account for a particular plaintiff when a case is dismissed. Defendants' deficiency list will be updated as corrections are received. The Plaintiffs should be reminded to check the lists each month for their cases and to promptly notify Defendants if they believe a case is listed in error, or if they have thereafter served the discovery. Defendants have agreed to promptly revise the list to remove cases included in error.

### **New Cases**

- A complaint seeking certification of classes for medical monitoring and other relief was filed on June 17, 2024 (*Joni S. Bynum et al. V. LLT Management LLC, et al.*, Civil Action 3:24-cv-07065). Defendants have filed a tag-along notice regarding the *Bynum* action with the MDL and the JMPL, however, the matter is already before Judge Shipp.
- A class action complaint seeking to declare that certain transactions implemented in conjunction with LTL's bankruptcy filings were fraudulent was filed on May 22, 2024 (*Rebecca Love et al., v. LLT Management LLC, et al.*, Civil Action 3:24-cv-06320). On June 11, 2024 Plaintiffs filed a Motion for TRO and Order to Show Cause Why a Preliminary Injunction Should Not Issue (*Rebecca Love, et al.*, Civil Action 3:24-cv-06320, Doc. 6). Defendants' Brief in Oppositon to the TRO and Preliminary Injunction was filed on June 18, 2024 (Civil Action 3:24-cv-06320, Doc. 16). In response to Defendants' tag of *Love* to the MDL, the court stated that tagging

is not necessary as the case is already assigned to Judge Shipp. On June 28, 2024, Judge Shipp issued a Memorandum Opinion and Order denying Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction (Civil Action 3:24-cv-06320, Doc. 31). On July 3, 2024, Plaintiffs filed a Notice of Appeal to appeal Judge Shipp's decision to the United States Court of Appeals for the Third Circuit (Civil Action 3:24-cv-06320, Doc. 37). On July 5, 2024, Plaintiffs-Appellants filed an Opposed Emergency Motion for Injunction Pending Appeal or, Alternatively, to Expedite Appeal (Doc. 5). On July 12, 2024, the Johnson & Johnson Defendants filed a response. (Doc. 12). On July 15, Plaintiffs-Appellants filed a Reply. (Doc. 13). On July 18, 2024, the United States Court of Appeals for the Third Circuit denied the Appellants Motion for injuncton pending appeal or, alternatively, to expedite appeal ( Doc. 26).

- On July 11, 2024, Defendants filed a Motion to Dismiss Class Action Complaint in the *Love* matter (Civil Action 3:24-cv-06320, Doc. 47). The motion is set for August 5, 2024, with Plaintiffs' Opposition due on July 22, 2024, and Defendants' Reply due on July 29, 2024.

#### **Status of New Jersey Proceedings Before Judge Porto:**

- Depositions of Plaintiffs' case specific experts in the *Carl* and *Balderrama* matters were completed for Drs. Godleski, Wolf, and Cramer.
- Depositions of Defendants' case specific experts in the *Carl* and *Balderrama* matters were completed for Drs. Finan (*Carl & Balderrama*) and Nagarsheth (*Balderrama*). The deposition of Defendants' other case specific expert for *Carl and Balderrama*, Dr. Felix was competed on June 22-23, 2024.
- The depositions of general experts appearing in both the MDL and MCL are coordinated in accordance with the state court's order.
- The parties filed post-trial briefs on the issue of disqualification on May 17, 2024 to Your Honor and Judge Porto; replies were filed on May 24, 2024.

Thank you for your attention to these matters.

Respectfully,

/s/ Susan M. Sharko

Susan M. Sharko

**FAEGRE DRINKER BIDDLE & REATH LLP**

*Attorneys for Defendants  
Johnson & Johnson and  
LLT Management, LLC*

Hon. Pauline L. Simon, U.S. Magistrate Judge  
July 18, 2024  
Page 6

Encl: (0)

Cc: Leigh O'Dell (via e-mail)  
Michelle Parfitt (via e-mail)  
All counsel of record (via ECF)